



MAYOR COLEEN J. SENG

www.ci.lincoln.ne.us

Office of the Mayor
555 South 10th Street
Suite 208
Lincoln, Nebraska 68508
402-441-7511
fax: 402-441-7120
mayor@ci.lincoln.ne.us

December 18, 2003

Ordinance #03-176S3 - Amending Title 8 of the Lincoln Municipal Code relating to Health and Sanitation by creating a new Chapter 8.48 entitled the Lincoln Smokefree Air Act

Dear City Council Chairperson and Members:

I hereby veto Ordinance #03-176S3, passed by the City Council December 15, 2003, which proposes to create a new ordinance known as the Lincoln Smokefree Air Act.

The ordinance as approved by the City Council presents many issues of unfairness and inequity. The ordinance passed does not fulfill its original stated purpose of protecting the health of workers and the public because it treats people differently in similar situations. The inherent unfairness makes it difficult for the public to know where smoking is banned and where it is not. The ordinance as passed would be difficult and expensive to enforce and difficult to defend.

Most importantly, the ordinance as passed is not fair. In considering Lincoln's bars, grills, cafes and restaurants, I cannot endorse or implement an ordinance that creates an uneven playing field in the workplace defined by smoking "haves" and "have-nots". It also is wrong to expect small businesses to build smoking rooms unless the requirement applies equally to all.

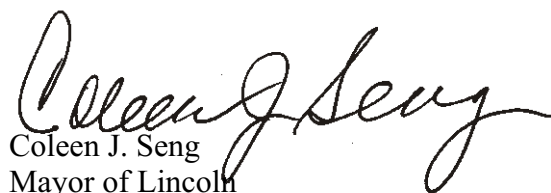
The ordinance establishes different rules for bars, restaurants and other businesses, resulting in unequal treatment of the public's health. The City Attorney has advised me, as he advised the City Council, that the amendments leave the City of Lincoln legally vulnerable. The ordinance would not treat people or businesses that are in similar situations the same.

The Smokefree Air Act as passed is not enforceable and would be an administrative nightmare. The amendments allow smoking in establishments where up to 60 percent of the sales are from food. That is not enforceable. The City has no ability to review the receipts from bars, grills, cafes, and restaurants, so the City has no existing method to track or enforce the distinction. The administrative cost for businesses to prepare and the city to review and verify the business revenues would be too burdensome and too expensive for both.

The original Smokefree Air Act as introduced contained the key features of being fair and equitable, simple to enforce and easy to understand. I respect the City Council's rightful role in hearing public testimony and following the legislative process. But in reviewing what the Council approved, I have concluded this ordinance is unfair, unenforceable and legally questionable.

I remain steadfast in my view that the public should be protected from secondhand smoke. I encourage Lincoln businesses to be smoke free. I believe the community can learn from this experience. Together, we can create an ordinance that improves public health, is fair and equitable, is not burdensome to business, and is simple to understand and enforce.

I hereby veto Ordinance #03-176S3.


Coleen J. Seng
Mayor of Lincoln



December 18, 2003

Veto Message - 4801 Randolph St. Special Permit for Alcohol Sales

Page 2

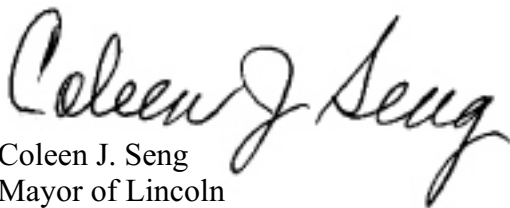
the end, the open-ended process remained. This underscores the need for the public process. There are instances where zoning conditions are approved without the process used here. If my decision was based solely on the background and reputation for good management of the applicant, it would be an easy approval. However, those credentials must be tempered by the possibility that the property might be sold. Similarly, neighbor concerns about the number of retail alcohol licenses were not part of my decision, as they do not directly impact the land use at this site.

The proposed mitigation in this case includes many conditions that are similar to those denied in the past. In recommending approval, the planning staff report indicates the sale of alcohol for consumption of the premises is an accessory use in this instance, and would not significantly increase the impact of this use upon the neighborhood.

While I can support some creative efforts to find mitigation, I do not support interpreting the zoning restrictions to include this concept of accessory use as it would apply to all but a few "beer/liquor only" establishments. If this were the case, the City would be telling neighbors that concerns about traffic, light, noise and other secondary affects of retail alcohol sales are mitigated by a subjective standard that depends more on the ownership and management of the facility, rather than on the use itself. Worse, this is directly in opposition to the recommendation of the planning commission, and the previous determination of the city regarding essentially the same mitigation at the same location in 2002.

Since the ordinance is based on the concerns of locating alcohol sales in proximity to residences and has enjoyed long support, there appears to be little reason to abandon those concerns. There is a simple policy choice to make at this time. If the staff and applicant here demonstrate that this is the only workable mitigation, and I find that the mitigation is not supported, then we must admit the process and good faith effort of seeking proposed mitigation through this public process has not produced acceptable results. The solution is not to "hold our nose" and approve mitigation we know does not correlate to the concerns of the ordinance, it is to amend the ordinance to eliminate the ability to provide mitigation. Therefore, I am instructing the City Law Department to prepare an amendment to the ordinance to eliminate the mitigation option and enforce the 100 foot minimum distance.

For the above and foregoing reasons. I hereby Veto Special Permit 2002 (Bill No. 03-334/Resolution A-82516)

A handwritten signature in black ink, reading "Coleen J. Seng". The signature is fluid and cursive, with the first name "Coleen" being more prominent than the last name "Seng".

Coleen J. Seng
Mayor of Lincoln